

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Subtitle B of Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139), as added by § 2 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002, effective July 24, 2002 (D.C. Law 14-182; 49 DCR 8276) (August 30, 2002) (the "Act"), and PR 15-258 (deemed approved on October 4, 2003), hereby gives notice of the intent to adopt, in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. The Act provides that each attorney employed at the level of DS-13 or above who is required to be a member of the D.C. Bar as a prerequisite of employment and who is employed by the Mayor, the Office of the Corporation Counsel, the Office of the Chief Financial Officer, the Board of Education, and by any independent agency, shall obtain, on an annual basis, a certificate of good standing and file the certificate with the D.C. Office of Personnel. The Act also requires that the Director of Personnel promulgate rules and that the rules be submitted to the Council for a 45-day period of review. These rules will amend Chapter 9 of the *D.C. Personnel Regulations*, Excepted Service, by adding a new § 915 establishing the provisions for the filing of the certificate and related procedures, including the standards for the granting of temporary waivers of the filing requirement and attorney notification procedures. While PR 15-28 was deemed approved by the Council on January 25, 2003 and a Notice of Proposed Rulemaking published at 50 DCR 1572 (February 14, 2003), comments were received and substantive changes incorporating some of the comments are being made by these new proposed rules. Specifically, § 915.6 now provides that any consolidated listing requesting certificates of good standing for attorneys shall include each attorney's bar number, and a new § 915.7 has been added to provide that any consolidated listing prepared shall be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year. Upon adoption, these rules will amend Chapter 9, *D.C. Personnel Regulations*, Excepted Service, published at 32 DCR 2271 (April 26, 1985), and amended at 36 DCR 7931 (November 17, 1989), 39 DCR 6171 (August 21, 1992), and 47 DCR 8093 (October 6, 2000).

CHAPTER 9**EXCEPTED SERVICE**

A new § 915 is being added to read as follows:

915 CERTIFICATE OF GOOD STANDING FILING REQUIREMENT

- 915.1 The provisions of this section shall be applicable to each attorney at the level of DS-13 or above or equivalent who is required to be a member of the D.C. Bar as a prerequisite of employment, and who is employed by:

- (a) The Office of the Chief Financial Officer;
 - (b) Any agency, independent or subordinate, and whose duties, in whole or substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer; and
 - (c) Any executive independent agency excluded from the Legal Service, including the Housing Finance Agency, Pretrial Services Agency, Public Defender Service, Water and Sewer Authority, and Housing Authority.
- 915.2 Not later than December 15 of each year and as specified in this section, each attorney as described in § 915.1 shall file with the D.C. Office of Personnel a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.
- 915.3 The certificate of good standing submitted every year pursuant to § 915.2 shall be dated not earlier than October 1 and not later than December 15 of the year of submission.
- 915.4 Each agency or independent personnel authority that employs attorneys subject to the filing requirement shall be responsible for:
- (a) Notifying each agency attorney of the filing requirement every year; and
 - (b) Submitting a list of agency attorneys subject to the filing requirement to the Director of Personnel every year, not later than the December 15 deadline.
- 915.5 Notwithstanding the procedures in § 915.2, each agency or independent personnel authority may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing for each agency attorney subject to the filing requirement, and file the original individual certificates with the D.C. Office of Personnel on behalf of each attorney.
- 915.6 An agency or independent personnel authority that elects to submit a consolidated listing as specified in § 915.5 shall establish internal procedures for the compilation of the consolidated listing and every year inform each attorney subject to the filing requirement of the internal procedures. Any consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals shall include, at a minimum, the following:
- (a) The attorney's name and bar number and, if necessary, some other identifier such as the attorney's date of admission to the D.C. Bar;
 - (b) A request that an individual certificate be prepared for each attorney in good standing from the names submitted in the consolidated listing; and

- (c) A request that the Committee on Admissions, D.C. Court of Appeals, specify which attorneys, from the names submitted in the consolidated listing, are not in good standing.
- 915.7 Any consolidated listing prepared pursuant to § 915.5 shall be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year.
- 915.8 Nothing in this section shall prevent an attorney subject to the certificate of good standing filing requirement from individually applying for the certificate from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the D.C. Office of Personnel by December 15 of each year.
- 915.9 Each agency head or independent personnel authority that elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals pursuant to § 915.5 shall provide every year to the Director of Personnel:
- (a) Each original individual certificate of good standing received;
 - (b) The name of each attorney who is not in good standing; and
 - (c) A copy of the consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals.
- 915.10 Upon receipt of the original individual certificate of good standing from each attorney, or agency or independent personnel authority on his or her behalf, the Director of Personnel or his or her designee shall file the original individual certificates of good standing in a place designated for that purpose.
- 915.11 Notwithstanding any other provision in this section, the Director of Personnel may establish internal procedures to identify every year each attorney as described in § 915.1 who is subject to the filing requirement and subsequently identify any attorney who did not comply with the filing requirement.
- 915.12 Failure of any attorney as described in § 915.1, either individually, or through his or her employing agency or independent personnel authority, to file the certificate of good standing with the D.C. Office of Personnel by December 15 of each year, or to request and receive a temporary waiver of the filing requirement as specified in this section, shall result in forfeiture of employment.
- 915.13 An attorney for whom compliance with the filing requirement by December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause may request, in writing, a temporary waiver of the filing requirement.

- 915.14 Any request for a temporary waiver of the filing requirement shall be submitted by the attorney to the personnel authority not later than December 1. The request shall include:
- (a) The approximate date by which the attorney believes he or she may be able to obtain the certificate of good standing; and
 - (b) Any appropriate or required supporting material or documentation to substantiate the request.
- 915.15 The personnel authority shall immediately consider every request for a temporary waiver of the filing requirement, determine which requests shall be denied, inform the attorney of the denial in writing, and submit to the Director of Personnel any request for which approval is recommended.
- 915.16 The Director of Personnel or his or her designee shall promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A written notification granting a temporary waiver of the filing requirement shall include the extended date by which the attorney shall file the certificate of good standing with the D.C. Office of Personnel.
- 915.17 Each agency or independent personnel authority shall provide a written notice of the intent to terminate employment to any agency attorney who is not in compliance with the filing requirement. The notice shall inform the attorney:
- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing with the D.C. Office of Personnel;
 - (b) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate of good standing with the D.C. Office of Personnel within the prescribed period; and
 - (c) The effective date of termination in the event that he or she is unable to file the certificate of good standing with the D.C. Office of Personnel within the prescribed period.
- 915.18 Each attorney shall be notified by the personnel authority at the time of hire, in writing, of the certificate of good standing filing requirement and that failure to comply with the requirement by December 15 of each year following the year of employment with the District government shall result in forfeiture of employment.
- 915.19 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of Personnel shall publish in the *D.C. Register* the list of attorneys who have not met the filing requirement.

Section 999 is amended to add the following definitions:

Administrative hearing officer – A person whose duties, in whole or substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged in adjudicatory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

Administrative law judge – A person whose duties, in whole or substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative, prosecutory or advisory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Acting Director of Personnel, 441 4th Street, NW, Suite 310S, Washington, D.C. 20001, within thirty (30) days of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Title XVIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.01 et seq.) (2001), hereby gives notice of the intent to adopt the following rule in not less than thirty (30) days from publication of this notice in the *D.C. Register*. This rule will amend § 1803 of Chapter 18 of the *D.C. Personnel Regulations*, Employee Conduct, to add a new subsection to permit the limited use of the Mayor's name or title in nongovernmental bona fide charitable solicitations or by a nonprofit entity in a fundraising event that supports a bona fide charitable activity benefiting the District of Columbia. Upon adoption this rule will amend Chapter 18 of the *D.C. Personnel Regulations*, Employee Conduct, published at 33 DCR 6794 (October 31, 1986), and amended at 35 DCR 764 (February 5, 1988), 36 DCR 3860 (June 2, 1989), 40 DCR 8358 (December 3, 1993), 48 DCR 3074 (April 6, 2001) and 48 DCR 9639 (October 19, 2001).

CHAPTER 18**EMPLOYEE CONDUCT**

Section 1803 of these regulations is amended by adding a new subsection 1803.13 to read as follows:

- 1803.13 Nothing contained in these regulations shall preclude the Mayor from serving as an honorary chair or honorary member of a nonprofit entity's fundraising event, so long as the entity for which funds are raised supports a nongovernmental bona fide charitable activity benefiting the District of Columbia. Use of the Mayor's name or title in fundraising solicitations or announcements of general circulation shall be in accordance with such terms and limitations as the Mayor may prescribe by Mayor's order or by direction in particular cases. The authority granted by this subsection shall not extend to the use of the Mayor's name or title in solicitations made by or on behalf of the Mayor directly to individual contributors.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Acting Director of Personnel, 441 4th Street, N.W., Suite 310S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL
NOTICE OF PROPOSED RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with §§ 2401 through 2409 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Official Code § 1-624.01 *et seq.*), hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. These rules will amend Chapter 24, *D.C. Personnel Regulations*, Reductions In Force, to update the applicability provisions; update certain references to performance ratings throughout the chapter; specify more clearly that the appropriate personnel authority shall be responsible for making a final determination that a reduction in force is necessary; modify the definition of the term "competitive level;" change the advance notice periods for reductions in force and furloughs from 15 days to 30 days; add provisions stating that an employee who receives a written notice of release from his or her competitive level due to reduction in force shall be entitled to be retained in an active duty status during the notice period unless the agency head (or his or her designee) places the employee on administrative leave during that period; update the priority placement provisions applicable to attorneys subject to reduction in force; add language stating more clearly the procedures for priority placement consideration for reductions in force conducted in lesser competitive areas; update the citations to the D.C. Official Code throughout the chapter; and to make other minor modifications to the chapter. Upon adoption, these rules will amend Chapter 24, Reductions In Force, published at 32 DCR 1182 (March 1, 1985) and amended at 37 DCR 7119 (November 9, 1990), 38 DCR 6158 (October 4, 1991), 40 DCR 2114 (March 26, 1993), and 47 DCR 2425 (April 7, 2000).

CHAPTER 24

REDUCTIONS IN FORCE

Chapter 24 of the D.C. Personnel Regulations is amended as follows:

2400 APPLICABILITY

2400.1 The provisions of §§ 2400 through 2499 of this chapter shall apply to:

- (a) All employees appointed in the Career Service under the authority of § 801 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Official Code § 1-608.01) (2001);
- (b) Any attorneys appointed to the Excepted Service; and

- (c) All line attorneys and supervisory and non-supervisory attorneys who do not occupy Senior Executive Attorney Service positions who are appointed to the Legal Service under the authority of § 851 through 862 of the CMPA (D.C. Official Code § 1-608.51 *et seq.*) (2001).

2400.2 The provisions of §§ 2438 through 2446 of this chapter apply to:

- (a) All attorneys appointed to the Senior Executive Attorney Service under the authority of § 853 of the CMPA (D.C. Official Code § 1-608.53) (2001);
- (b) All employees appointed to the Excepted Service under the authority of §§ 901 through 908 of the CMPA (D.C. Official Code § 1-609.01 *et seq.*) (2001); and
- (c) All employees appointed to the Management Supervisory Service under the authority of §§ 951 through 958 of the CMPA (D.C. Official Code § 1-609.51 *et seq.*) (2001).

2400.3 The provisions of §§ 2438 through 2445 of this chapter shall apply to all employees appointed to the Executive Service under the authority of §§ 1051 through 1063 of the CMPA (D.C. Official Code § 1-610.51 *et seq.*) (2001).

2400.4 The provisions of §§ 2409 and 2499 of this chapter shall apply to all employees in the Senior Executive Attorney, Excepted, and Management Supervisory Services only when applying the provisions of §§ 2438 through 2446.

2400.5 The provisions of §§ 2409 and 2499 of this chapter shall apply to all employees in the Executive Service only when applying the provisions of §§ 2438 through 2445.

2401 ACTIONS COVERED

2401.1 Each personnel authority shall follow these regulations when releasing a competing employee from his or her competitive level when the release is required by any of the following:

- (a) Lack of work;
- (b) Shortage of funds;
- (c) Reorganization or realignment; or
- (d) The exercise of restoration rights as provided in 38 U.S.C. § 2021 *et seq.*

2402 ACTIONS NOT COVERED

2402.1 This chapter shall not apply to the following:

- (a) The termination of a temporary promotion;

- (b) The return of an employee to the position from which the employee was promoted on a temporary or term basis;
 - (c) Reassignment or demotion to a different position that is not at a lower grade than the position from which an employee was temporarily promoted;
 - (d) The return to a former or comparable position of a supervisor or manager who failed to satisfactorily complete the required probationary period;
 - (e) Termination of a term appointment upon its expiration date;
 - (f) Termination of a temporary or TAPER appointment;
 - (g) Reduction in grade as a result of a position classification action affecting the employee's position;
 - (h) Demotion as a result of change in classification standards or error in the application of either of the following:
 - (1) Classification or qualification standards; or
 - (2) Time-in-grade requirements for promotion;
 - (i) The separation of an employee or a change in an employee's position or grade as a result of an action taken pursuant to Chapter 16 of these regulations; or
 - (j) Separation of an employee who is not within reach for release from his or her competitive level for refusal to accept a reassignment either to a vacant position or to an encumbered position in his or her competitive level through displacement action.
- 2402.2 To the extent inconsistent with the provisions of a collective bargaining agreement, this chapter shall not apply to employees covered by such agreement with respect to the specific inconsistencies.
- 2403 AGENCY CONSIDERATIONS PRIOR TO PLANNING A REDUCTION IN FORCE**
- 2403.1 Planning the work program and organizing the work force to accomplish the work program within available resources shall be the responsibilities of the agency.
- 2403.2 An agency may, within its budget authorization, take appropriate action, prior to planning a reduction in force, to minimize the adverse impact on employees or the agency. Examples of such actions are the following:
- (a) Job sharing and reduced working hours under § 2404;

- (b) Reassigning employees to vacant positions which have been determined to be essential to the continued maintenance of the agency's operation;
- (c) Filling vacancies with temporary employees to perform essential work, or contracting out such work, until the reduction in force takes place;
- (d) Freezing vacancies when reductions in funds are anticipated; and
- (e) Furloughing employees in accordance with the provisions of §§ 2438 through 2446 when reductions in expenditures are required.

2404 JOB SHARING AND REDUCED WORKING HOURS

- 2404.1 An employee may be assigned to job sharing or reduced working hours, provided the following conditions are met:
- (a) The employee is not serving under an appointment with a specific time limitation; and
 - (b) The employee has voluntarily requested such an assignment in response to the agency's request for volunteers for the purpose of considering the provisions of § 2403.2(a) in order to preclude conducting, or to minimize the adverse impact of, a reduction in force.

2405 GENERAL PROVISIONS

- 2405.1 Each personnel authority and agency head shall apply the rules set forth in §§ 2400 through 2431 when conducting a reduction in force.
- 2405.2 Personnel authorities and agencies may, in order to minimize the adverse impact of a reduction in force, offer a released employee a vacant position for which he or she qualifies.
- 2405.3 The need to apply reduction-in-force procedures shall not suspend an agency's authority and responsibility to discipline, remove, demote, or reassign any employee under any other chapter of these regulations.
- 2405.4 Personnel authorities have authority over the preparation for, and implementation of, a reduction in force, provided that agencies under the personnel authority of the Mayor shall not plan or conduct the reduction in force without the approval of the Mayor, as provided in § 2406.4.
- 2405.5 If the personnel authority finds that preparations are contrary to these regulations, the personnel authority shall require appropriate corrective action. Such action shall be implemented prior to the completion of the reduction in force.

- 2405.6 An action which has been found by the personnel authority or the Office of Employee Appeals to be erroneous as a result of procedural error shall be reconstructed and a re-determination made of the appropriate action under the provisions of this chapter.
- 2405.7 The retroactive reinstatement of a person who was separated by a reduction in force under this chapter may only be made on the basis of a finding of a harmful error as determined by the personnel authority or the Office of Employee Appeals. To be harmful, an error shall be of such a magnitude that in its absence the employee would not have been released from his or her competitive level.
- 2405.8 During a reduction in force, the agency, with the approval of the personnel authority, may increase or decrease the number of positions previously identified for abolishment.

2406 CONDUCTING A REDUCTION IN FORCE

- 2406.1 If a determination is made that a reduction in personnel is to be conducted pursuant to the provisions of §§ 2400 through 2431, the agency shall submit a request to the appropriate personnel authority to conduct a reduction in force.
- 2406.2 Upon approval of the request as provided in §§ 2406.1, the agency shall prepare the following:
- (a) An administrative order or equivalent identifying the competitive area, and the positions to be abolished, by position number, title, series, grade, and organizational location, and the reason therefore; and
 - (b) A D.C. Standard Form 52 (DC-SF 52) for each position to be abolished, without indicating the name of the incumbent of the position.
- 2406.3 Any changes following the submission and approval of the request to conduct a reduction in force shall be made by issuance of an amendment to the administrative order by the agency. As appropriate, corrected DC-SF 52s shall accompany the amended administrative order.
- 2406.4 The approval by the appropriate personnel authority of the administrative order or amendment thereof shall constitute the authority for the agency to conduct a reduction in force.

2407 UNAUTHORIZED DETAILS

- 2407.1 Any agency head initiating a reduction in force shall assure that no covered employee in the affected competitive area is serving on an unauthorized detail.

2408 DETERMINING RETENTION STANDING

- 2408.1 The retention standing of each competing employee shall be determined on the basis of tenure of appointment, length of creditable service, veterans preference, residency preference, and relative work performance, and on the basis of other selection factors as

provided in these regulations. Together these factors shall determine whether an employee is entitled to compete with other employees for employment retention and, if so, with whom, and whether the employee is retained or released.

2409 COMPETITIVE AREA

- 2409.1 Except as provided in this section, each agency shall constitute a single competitive area.
- 2409.2 Lesser competitive areas within an agency may be established by the personnel authority.
- 2409.3 An agency head may request the personnel authority to establish lesser competitive areas within the agency by submitting a written request which includes all of the following:
- (a) A description of the proposed competitive area or areas which includes a clearly stated mission statement, the operations, functions, and organizational segments affected;
 - (b) An organizational chart of the agency which identifies the proposed competitive areas; and
 - (c) A justification for the need to establish a lesser competitive area.
- 2409.4 Any lesser competitive area shall be no smaller than a major subdivision of an agency or an organizational segment that is clearly identifiable and distinguished from others in the agency in terms of mission, operation, function, and staff.
- 2409.5 Employees in one competitive area shall not compete with employees in another competitive area.

2410 COMPETITIVE LEVELS

- 2410.1 Each personnel authority shall determine the positions which comprise the competitive level in which employees shall compete with each other for retention.
- 2410.2 Assignment to a competitive level shall be based upon the employee's position of record.
- 2410.3 An employee's position of record is the position for which the employee receives pay or the position from which the employee has been temporarily reassigned or promoted on a temporary or term basis.
- 2410.4 A competitive level shall consist of all positions in the competitive area identified pursuant to § 2409 in the same grade (or occupational level), and classification series and which are sufficiently alike in qualification requirements, duties, responsibilities, and working conditions so that the incumbent of one (1) position could successfully

perform the duties and responsibilities of any of the other positions, without any loss of productivity beyond that normally expected in the orientation of any new but fully qualified employee.

- 2410.5 The composition of a competitive level shall be determined on similarity of the qualification requirements, including selective factors, to perform the major duties of the position successfully, the title and series of the positions, and other factors prescribed in this section and § 2411.

2411 SEPARATE COMPETITIVE LEVELS

- 2411.1 Separate competitive levels shall be established for the following:

- (a) Positions under different pay schedules;
- (b) Positions filled on a seasonal basis;
- (c) Positions filled on a part-time basis;
- (d) Positions filled on an intermittent basis;
- (e) Positions filled by supervisors or managers; and
- (f) Positions filled by employees in a formally designated trainee or developmental program having all the characteristics covered in § 2411.3.

- 2411.2 Employees whose official position descriptions have the same title, series, and grade, but who have specialties which are identified on their position descriptions by parenthetical titles in accordance with applicable classification standards, shall be assigned to separate competitive levels.

- 2411.3 A position shall be considered as being formally designated in a trainee or developmental program if it has all the following characteristics:

- (a) The program was designed to meet the agency's needs and requirements for the development of skilled personnel;
- (b) The program was formally designated, with its provisions made known to employees and supervisors;
- (c) The program is developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and
- (d) The program is fully implemented, with the participants chosen through competitive selection procedures of Chapter 8 of these regulations.

2412 RETENTION REGISTER

- 2412.1 A retention register shall be established by the appropriate personnel office whenever a competing employee is to be released from his or her competitive level.
- 2412.2 A separate retention register shall be prepared for each competitive level in the competitive area.
- 2412.3 The retention register shall document the final action taken, and the effective date of that action, for each employee released from his or her competitive level.
- 2412.4 Each competitive level shall be identified by the title, series, and grade of the position(s) that composed the competitive level.
- 2412.5 When a competitive level consists of two (2) or more different titles, each position title shall be identified on the retention register.
- 2412.6 The retention register for each competitive level shall list all positions in the competitive level. A written justification shall be attached to the retention register when positions of the same title, series, and grade are placed in different competitive levels.
- 2412.7 The retention register shall include all of the following:
- (a) The name of each competing employee in the competitive level, whether in duty status or paid or unpaid leave status;
 - (b) The name of each competing employee in the competitive level who is receiving continuation of pay under § 2318 of the CMPA (D.C. Official Code § 1-623.18) (2001);
 - (c) The name of each competing employee in the competitive level who is in a leave-without-pay status based upon receipt of disability compensation benefits under §§ 2301 through 2347 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*) (2001 & Supp. 2003);
 - (d) The name of each competing employee detailed or temporarily reassigned from the competitive level;
 - (e) The name of each competing employee temporarily promoted from the competitive level by a temporary or term promotion; and
 - (f) The name of each competing employee on a temporary assignment from the competitive level to a governmental entity, an institution of higher education, or a private sector organization pursuant to Chapter 27 of these regulations.
- 2412.8 An employee on military duty with restoration rights as specified in Chapter 8 of these regulations shall not be placed on a retention register.

2412.9 An employee who has received a written decision under Chapter 16 of these regulations to demote him or her shall compete for retention in the position to which he or she will be demoted.

2412.10 At the bottom of the retention register, or on a separate list appended to the retention register, in the order set forth below, shall be the following:

- (a) The name and expiration date of the appointment or reassignment of each employee serving in a position in the competitive level who is in a specifically limited temporary appointment or on a temporary reassignment;
- (b) The name and expiration date of promotion of each employee serving in a position in the competitive level on a temporary or term promotion; and
- (c) The name of each employee serving in a position in the competitive level with a current performance rating of "Unsatisfactory," "Fails Expectations," or "Does Not Meet Expectations," as applicable.

2413 RETENTION STANDING: TENURE GROUPS

2413.1 The name of each competing employee shall be listed on the retention register in the order of his or her retention standing.

2413.2 Competing employees shall be categorized on a retention register in the groups listed in § 2413.3 on the basis of tenure of employment, including additional credit as provided in §§ 2416 and 2417.

2413.3 The retention register groups, in descending order of retention standing, shall be tenure group I, group II, and group III.

2413.4 Within each group, employees shall be listed by their reduction-in-force service computation date, as defined in § 2415.3, beginning with the earliest date.

2413.5 Tenure group I shall include each employee (other than an employee in group II or group III) who is not serving a probationary period.

2413.6 Tenure group II shall include the following:

- (a) Each employee serving a probationary period; and
- (b) Each employee who has completed his or her probationary period, and who is in an obligated position.

2413.7 Tenure group III shall include each employee serving under an indefinite appointment, a TAPER appointment, or a term appointment.

2414 NONCOMPETING EMPLOYEES

- 2414.1 An employee serving under a temporary appointment shall be a non-competing employee in a reduction in force and shall be terminated ahead of any competing employee in his or her competitive level without regard to length of creditable service or preference eligibility, unless the positions in the competitive level are not affected by the reduction in force.
- 2414.2 An employee with a performance rating of "Unsatisfactory," "Fails Expectations," or "Does Not Meet Expectations," as applicable, shall be a non-competing employee in a reduction in force and shall be terminated ahead of any competing employee in his or her competitive level without regard to length of creditable service or preference eligibility, unless the positions in the competitive level are not affected by the reduction in force.
- 2414.3 To ensure that non-competing employees are separated ahead of competing employees, they shall be listed separately below group III employees on the retention register or on a separate list appended to the retention register, as provided in § 2412.10.

2415 RETENTION STANDING: LENGTH OF SERVICE

- 2415.1 Creditable service in determining length of service shall include all federal, District government, and military service otherwise creditable for Civil Service Retirement System purposes under title 5 U.S.C. § 8332 or D.C. government retirement under §§ 2602 or 2603 of the CMPA (D.C. Official Code §§ 1-626.02 or 1-626.03) (2001).
- 2415.2 A reduction-in-force service computation date shall be established for each competing employee as specified in this section.
- 2415.3 An employee's reduction-in-force service computation date shall be the date which reflects total creditable service plus additional service credit, if applicable, for a performance rating of "Outstanding," "Substantially Exceeds Expectations," or "Significantly Exceeds Expectations," as applicable, veterans preference, and residency preference; and that date shall be one (1) of the following:
- (a) The date of entrance on duty, when there is no previous creditable service;
 - (b) The date obtained by subtracting total creditable previous service from the date the employee last entered on duty; or
 - (c) The date obtained by subtracting from the date established by § 2415.3(a) or (b) the additional service credit allowed for one (1) or more of the following:
 - (1) A current performance rating of "Outstanding," "Substantially Exceeds Expectations," or "Significantly Exceeds Expectations," as applicable, in accordance with § 2416.1;

- (2) A preference eligible in accordance with §§ 2417.4 and 2417.5; and
- (3) Residency preference in accordance with § 2418.

2416 RETENTION STANDING: PERFORMANCE RATING

- 2416.1 Each employee who has a current performance rating of "Outstanding," "Substantially Exceeds Expectations," or "Significantly Exceeds Expectations," as applicable, shall be credited with four (4) years of additional service.
- 2416.2 The current performance rating shall be the performance rating for the year which ended on the March 31, August 31, or September 30, as applicable, preceding the date of the reduction-in-force notice.
- 2416.3 To be credited under § 2416.1, the performance rating must have been officially acted upon with all the necessary approvals, received in the appropriate personnel office maintaining the official personnel folder no later than thirty (30) days before the close of business of the day immediately before the reduction-in-force notice is issued.
- 2416.4 A performance rating received by the personnel authority after the date specified in § 2416.3 shall not change the employee's retention standing.

2417 RETENTION STANDING: VETERANS PREFERENCE

- 2417.1 In accordance with § 2402(b)(1) of the CMPA (D.C. Official Code § 1-624.02(b)(1)) (2001), veterans preference eligibility shall be determined in accordance with federal law and regulations issued thereunder by the U.S. Office of Personnel Management.
- 2417.2 Pursuant to the regulations referred to in § 2417.1, a retired member of a military service shall be considered a preference eligible under this chapter only if he or she meets at least one (1) of the following conditions:
 - (a) The employee's military retirement is based on disability that either:
 - (1) Resulted from injury or disease received in the line of duty as a direct result of armed conflict; or
 - (2) Was caused by an instrumentality of war incurred in the line of duty during a period of war as defined by 38 U.S.C. §§ 101 and 301;
 - (b) The employee's military service does not include twenty (20) or more years of full-time active service, regardless of when performed. However, this total does not include periods of active service for training; or
 - (c) The employee has been employed continuously since November 30, 1964, in a position without a break in service of more than thirty (30) days.

- 2417.3 An employee who would otherwise be considered a preference eligible under conditions in § 2417.2(b) or (c) shall not be considered a preference eligible for purposes of this chapter if the employee retired at or above the rank of major or its equivalent.
- 2417.4 A preference eligible having a service-connected disability of thirty percent (30%) or more shall be credited with eight (8) years of additional service.
- 2417.5 A preference eligible other than as described in § 2417.4 shall be credited with four (4) years of additional service.

2418 RETENTION STANDING: RESIDENCY PREFERENCE

- 2418.1 Three (3) years of additional service shall be credited to each competing employee who is eligible for a residency preference as provided in § 2418.2.
- 2418.2 Residency preference eligibility in a reduction in force shall be afforded to all of the following:
- (a) Each competing employee who is a bona fide resident of the District of Columbia;
 - (b) Each competing employee who is not a resident of the District of Columbia, but who was hired prior to January 1, 1980 and has continued employment without a break in service of one (1) workday or more since that date; and
 - (c) Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health & Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, pursuant to the provisions of § 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e(b)), and who has continued employment without a break in service of one (1) workday or more since that date.

2419 EFFECTIVE DATE OF RETENTION STANDING

- 2419.1 The retention standing of each employee released from his or her competitive level shall be determined as of the date of release.
- 2419.2 When the personnel authority discovers an error in the determination of an employee's retention standing, it shall correct the error and adjust any erroneous reduction-in-force action in accordance with the employee's true retention standing as of the effective date established under this section.

2420 RELEASE FROM COMPETITIVE LEVEL

- 2420.1 A competing employee shall not be released from a competitive level while any of the following is retained in that level:

- (a) An employee with a specifically limited temporary appointment;
 - (b) An employee with a specifically limited temporary or term promotion; or
 - (c) An employee with a performance rating of "Unsatisfactory," "Fails Expectations," or "Does Not Meet Expectations," as applicable.
- 2420.2 A competing employee shall not be released from a competitive level while an employee with lower retention standing is retained in that level, except as required under § 2421 when an employee is retained under a mandatory exception.
- 2420.3 Competing employees shall be selected for release from a competitive level in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register.
- 2420.4 When one (1) or more but not all employees with the same reduction-in-force service computation dates in the same tenure group must be released from a competitive level, the ties shall be broken as follows:
- (a) The employee who encumbers the position to be abolished shall be released;
 - (b) If still tied, the employee who has the least service in the agency shall be released; and
 - (c) If still tied, the last digit of the social security number shall be used, and the employee with the lowest last digit shall be released.
- 2420.5 When an employee is selected for release from his or her competitive level, the personnel authority shall separate the employee from service.

2421 MANDATORY EXCEPTIONS

- 2421.1 When employees are released from their competitive levels under § 2420, the special retention preferences outlined in this section shall be applicable.
- 2421.2 Each group I or II preference eligible employee entitled to retention for one (1) year after restoration under the Vietnam Veterans Readjustment Assistance Act of 1974 (38 U.S.C. § 2021 *et seq.*), shall be retained over other employees in his or her tenure group for the retention period.
- 2421.3 Each group I or II non-preference eligible employee entitled to retention for either six (6) months or one (1) year after restoration under the Vietnam Veterans Readjustment Assistance Act of 1974 (38, U.S.C. § 2021 *et seq.*), shall be retained over other employees in his or her tenure group for the retention period.
- 2421.4 The retention register shall indicate the reasons for any deviation from the regular order of selection required by §§ 2421.2 and 2421.3, respectively.

2422 NOTICE TO EMPLOYEES

- 2422.1 Each competing employee selected for release from his or her competitive level under this chapter shall be entitled to written notice at least thirty (30) full days before the effective date of the employee's release.
- 2422.2 The notice required by § 2422.1 shall not be issued until the administrative order provided for in § 2406.3(a), or any amendment to that order, has been approved by the appropriate personnel authority.
- 2422.3 A notice shall not be issued less than thirty (30) days before the effective date of the employee's release.
- 2422.4 In counting the thirty-day (30-day) minimum notice period, the day the employee receives the notice shall be omitted; and a notice period that ends on a Saturday, Sunday, or legal holiday shall be automatically extended to the next workday.
- 2422.5 An agency shall not retain an employee beyond the end of the notice period.
- 2422.6 The notice to the employee shall specify the effective date of the employee's release from his or her competitive level.
- 2422.7 A notice shall expire when followed by the action specified in the notice, or in an amendment made to the notice before the agency takes the action. Such amendment shall be permitted without extension of the notice period only when the action to be taken is less severe than the action in the original notice.
- 2422.8 A reduction-in-force action shall not be taken before the effective date of a notice.
- 2422.9 An employee shall be retained in an active duty status during the notice period, unless on leave pursuant to § 1203 of the CMPA (D.C. Official Code § 1-612.03) (2001).
- 2422.10 Except as provided in § 2422.11, an employee who receives written notice of release from his or her competitive level due to reduction in force shall be entitled to be retained in an active duty status during the notice period.
- 2422.11 An employee who receives written notice of release from his or her competitive level due to reduction in force may be placed on administrative leave at the discretion of the agency head (or his or her designee).

2423 CONTENT OF NOTICE

- 2423.1 Each notice shall state the following:
- (a) The specific action to be taken and its effective date;
 - (b) The employee's competitive area, competitive level, tenure group, and reduction-in-force service computation date;

- (c) The place where the employee may inspect the regulations and records pertinent to his or her case;
- (d) The reasons for retaining a lower-standing employee in the same competitive level, if applicable;
- (e) The employee's appeal rights, including the time limit for appeal and the location of the office to which an appeal should be sent; and
- (f) If applicable, specific information concerning the employee's right to priority placement consideration, including the method in which the employee will be referred for agency reemployment priority consideration when the reduction in force was conducted in a lesser competitive area.

2423.2 A notice may be either a complete single notice, or a notice with an attachment containing the information specified in § 2423.1(f).

2424 RECORDS

2424.1 Each personnel authority shall maintain the correct records needed to determine the retention standing of competing employees.

2424.2 Each personnel authority shall allow inspection of retention registers and related records by the following:

- (a) An employee of the agency who is affected by the reduction in force (or his or her representative);
- (b) A supervisor or manager whose unit is affected by the reduction in force;
- (c) The Corporation Counsel (or his or her designee) representing the District government in a matter pursuant to this chapter;
- (d) The Office of Employee Appeals (OEA), to the extent that requested registers and records have a bearing upon an appeal before the OEA; and
- (e) Others who are determined by the personnel authority to have a legitimate need to review these materials in order to carry out their official duties.

2424.3 All registers and records relating to an employee shall be preserved intact for at least one (1) year from the date the employee is issued a specific reduction-in-force notice, or until any appeal is decided, whichever is later.

2425 APPEALS

2425.1 An employee who has received a notice of reduction in force may file an appeal with the Office of Employee Appeals (OEA) under the provisions of OEA's regulations if he or she believes that his or her agency has incorrectly applied the provisions of this chapter.

2425.2 Any appeal filed with the OEA shall be filed within thirty (30) days of the effective date of the agency action.

2426 PRIORITY PLACEMENT CONSIDERATION FOR ATTORNEYS IN THE LEGAL SERVICE AND EXCEPTED SERVICE

2426.1 The following attorneys shall be eligible for priority consideration under the agency reemployment priority program upon separation from their competitive level:

- (a) Line attorneys in the Legal Service;
- (b) Supervisory or non-supervisory attorneys in the Legal Service who do not occupy Senior Executive Attorney Service positions; and
- (c) Attorneys appointed to the Excepted Service who do not have reinstatement eligibility to the Career Service.

2426.2 Priority consideration under the agency reemployment program for attorneys described in § 2426.1 shall be limited only to other attorney positions in the Service the individual was serving in at the time of separation that are at grades no higher than the grade held by the employee at the time of separation.

2426.3 An employee as described in § 2426.1 who has reinstatement eligibility to the Career Service and who is separated from his or her competitive level shall be eligible for priority consideration, under the agency reemployment priority program and the displaced employee program, for positions for which qualified, at grades no higher than the grade last held under a Career Appointment (Permanent) or at any lower grade acceptable to the employee.

2427 AGENCY REEMPLOYMENT PRIORITY PROGRAM

2427.1 The personnel authority shall establish and maintain a reemployment priority list for each agency in which it separates group I and II employees.

2427.2 As appropriate, when a reduction in force is conducted in a lesser competitive area established pursuant to § 2409, the personnel authority may:

- (a) Limit the agency reemployment priority list to group I and group II employees separated from the lesser competitive area in which the reduction in force was conducted; and
- (b) Limit referrals pursuant to this section and § 2428 to positions within the lesser competitive area in which the reduction in force occurs.

2427.3 The reemployment priority list shall be annotated to identify those employees who are eligible for placement assistance limited to other attorney positions only, as provided in § 2426.1.

- 2427.4 A group I employee's name shall remain on the reemployment priority list for two (2) years, and a group II employee's name for one (1) year, from the date he or she was separated from his or her competitive level.
- 2427.5 An employee covered under the provisions of this section shall be entered automatically on the reemployment priority list immediately after it has been determined that the employee is to be adversely affected by the reduction in force and not later than issuance of the notice of reduction in force.
- 2427.6 Except as provided in § 2426.1, the employee's name shall be entered on the appropriate agency reemployment priority list for all positions for which qualified as follows:
- (a) At his or her grade level at the time of separation; and
 - (b) At any lower grade acceptable to the employee.
- 2427.7 The agency may delete an employee's name from the list when he or she declines a non-temporary position with a tour of duty similar to the position from which separated that is at the same grade level from which he or she was separated or at any lower grade acceptable to the employee.

2428 APPOINTMENTS FROM AGENCY REEMPLOYMENT PRIORITY LISTS

- 2428.1 When a qualified person is available on the agency reemployment priority list, including a lesser competitive area reemployment priority list, as appropriate, a Career Service position within the competitive area shall not be filled except as provided in Chapter 8 of these regulations concerning priority placement categories and order of priority, and shall not be filled by the following:
- (a) A new appointment;
 - (b) Transfer; or
 - (c) Reemployment of a person not on the appropriate agency reemployment priority list.
- 2428.2 Subsection 2428.1 shall not apply when all qualified persons on the agency reemployment priority list decline or fail to respond to offers of employment.
- 2428.3 In selecting employees on the agency reemployment priority list from among those adversely affected by reduction in force, but who have not yet been separated, offers of employment shall be made according to the employees' relative standing in their competitive levels. In this regard, a lower standing employee shall not be offered a position if a higher standing employee qualifies for the position, unless the higher standing employee declines the position.

- 2428.4 The order of priority in selecting from an agency reemployment priority list shall be as follows:
- (a) For positions from which separated, offers of employment shall be made according to the displaced employee's relative standing in his or her competitive level. In this regard, a lower standing displaced employee shall not be offered a position if a higher standing displaced employee is on the agency reemployment priority list, unless the higher standing displaced employee declines the position; and
 - (b) For positions other than from which separated, preference shall be given to a tenure group I displaced employee over a tenure group II displaced employee, without regard to their relative standing within the tenure group.
- 2428.5 When a position becomes available in the agency or lesser competitive area in which the reduction in force is conducted, as applicable, preference shall be given to the reemployment of a person who is on the agency reemployment priority list over a person who is on the displaced employee program list under § 2429.
- 2428.6 A personnel authority may appoint a person not on the agency reemployment priority list or a person on the list with lower standing than others on the list only when it is necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency or lesser competitive area by a person on the list with higher standing than the person appointed.

2429 DISPLACED EMPLOYEE PROGRAM

- 2429.1 Each personnel authority shall establish and maintain a displaced employee program list for priority placement referral of its displaced employees to all agencies or any other identifiable organizational components within the personnel authority under its administrative control.
- 2429.2 A group I employee's name shall remain on the list for two (2) years, and a group II employee's for one (1) year, from the date he or she was separated from his or her competitive level.
- 2429.3 The displaced employee program shall be separate and distinct from the Agency Reemployment Priority Program in §§ 2427 and 2428.
- 2429.4 The displaced employee program list shall consist of the following:
- (a) Displaced employees in tenure groups I or II who were separated from their positions by reduction in force; and
 - (b) Each displaced employee in tenure group I or II who fully recovers from a compensable injury, as defined in §§ 2301 through 2347 of the CMPA (D.C. Official Code § 1-623.01 *et seq.*) (2001 & Supp. 2003), more than one (1) year after the date compensation began, and who applies for reappointment within thirty (30) days of the date of cessation of compensation.

- 2429.5 The employee's name shall be entered on the displaced employee program list for all positions for which qualified as follows:
- (a) At his or her grade level at the time of separation; and
 - (b) At any lower grade acceptable to the employee.
- 2429.6 The personnel authority may delete an employee's name from the list when he or she declines a non-temporary position, with a tour of duty similar to the position from which separated, that is at the same grade level from which he or she was separated or at any lower grade acceptable to the employee.

2430 APPOINTMENT FROM DISPLACED EMPLOYEE PROGRAM LIST

- 2430.1 When a qualified person is available on the personnel authority's displaced employee program list, a Career Service position shall not be filled except as provided in Chapter 8 of these regulations concerning priority placement categories and order of priority, and shall not be filled by the following:
- (a) A new appointment;
 - (b) Transfer; or
 - (c) Reemployment of a person not on the displaced employee program list.
- 2430.2 Subsection 2430.1 shall not apply when all qualified persons on the displaced employee program list decline or fail to respond to offers of reemployment.
- 2430.3 In selecting from a displaced employee program list, preference shall be given to tenure group I employees over tenure group II employees.
- 2430.4 A personnel authority may appoint a person not on the displaced employee program list or a person on the list with lower standing than others on the list only when it is necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by a person on the list or a person on the list with higher standing than the person appointed.

2431 SEVERANCE PAY

- 2431.1 An employee separated pursuant to these regulations shall be entitled to severance pay in accordance with Chapter 11 of these regulations and as provided in § 2431.3, except that the total severance pay received over an employee's career in the District government shall not exceed twenty-six (26) weeks of pay at the rate received immediately before separation.
- 2431.2 In computing an employee's creditable service for severance pay purposes, additional service credit shall be provided as follows:

- (a) Four (4) years for an employee who qualifies for veterans preference as provided in § 2417; and
- (b) Three (3) years for an employee who qualifies for residency preference as follows:
 - (1) Each competing employee who is a bona fide resident of the District of Columbia;
 - (2) Each competing employee who is not a resident of the District of Columbia, but who was hired prior to January 1, 1980 and has continued employment without a break in service of one (1) workday or more since that date; and
 - (3) Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health & Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, pursuant to the provisions of § 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e(b)), and who has continued employment without a break in service of one (1) workday or more since that date.

2432 – 2437 (RESERVED)**2438 FURLOUGH – COVERAGE**

- 2438.1 A furlough may be conducted, in accordance with §§ 2438 through 2445 of this chapter, when it is required for budgetary reasons.
- 2438.2 The provisions of §§ 2409 and 2499 of this chapter shall apply to a furlough conducted pursuant to §§ 2438 through 2445 of this chapter.
- 2438.3 Except as provided in § 2439, when a furlough is approved or directed pursuant to § 2441, all employees of the agency or any lesser competitive area authorized by the personnel authority pursuant to § 2409 shall be furloughed for the same number of hours in the leave year, or, in the case of part-time employees, for a prorated number of hours.

2439 FURLOUGH – EXEMPTIONS

- 2439.1 A personnel authority may exempt from a furlough any employee who carries out public health or public safety functions.
- 2439.2 Any exemption approved by the personnel authority pursuant to § 2439.1 must be made applicable to:
 - (a) Every employee in a competitive level within the competitive area; or

- (b) Every employee in a competitive level within the competitive area who is assigned to the same geographic location.

2440 GENERAL PROVISIONS FOR A FURLOUGH

- 2440.1 Each personnel authority shall have the authority to approve or direct a furlough for the reason set forth in § 2438.1; provided that agencies under the personnel authority of the Mayor shall not plan or conduct a furlough without the specific approval of the Mayor.
- 2440.2 Each personnel authority shall have authority over the preparation for and implementation of furloughs.
- 2440.3 If the personnel authority finds that the preparation for or implementation of a furlough is contrary to these regulations, the personnel authority shall require appropriate corrective action.
- 2440.4 Time in a non-pay status as a result of a furlough conducted pursuant to § 2438.1 shall not affect an employee's waiting period for a step increase.

2441 APPROVAL OR DIRECTIVE TO CONDUCT A FURLOUGH

- 2441.1 When a furlough is approved or directed by a personnel authority, the personnel authority shall prepare and issue an administrative order or equivalent identifying all of the following:
 - (a) The reason for the furlough;
 - (b) The agency or lesser competitive area in which the furlough is to be conducted;
 - (c) Any exemptions from the furlough pursuant to § 2439;
 - (d) The number of furlough hours; and
 - (e) The designated pay period(s) in which the furlough is to be conducted.
- 2441.2 Any changes approved by the personnel authority following the issuance of an order to conduct a furlough, as provided in § 2441.1, shall be made by issuing an amendment to the administrative order or equivalent.

2442 REQUESTS TO CONDUCT A FURLOUGH

- 2442.1 If an agency determines that a furlough is required for the reason set forth in § 2438.1, the agency shall submit a request to the appropriate personnel authority to conduct a furlough.
- 2442.2 A request for approval to conduct a furlough pursuant to § 2442.1, shall specify all of the following:

- (a) The basis for the request;
- (b) The competitive area, or any lesser competitive area authorized by the personnel authority pursuant to § 2409, in which the furlough is to be conducted;
- (c) Any requested exemptions pursuant to § 2439;
- (d) The number of furlough hours; and
- (e) The designated pay period(s) in which the furlough is to be conducted.

2443 SCHEDULING A FURLOUGH

- 2443.1 Except in the case of any part-time employee, who shall have furlough hours prorated, each employee in the competitive area is to be scheduled for the same number of furlough hours.
- 2443.2 Furlough dates shall be scheduled in full day increments, to the extent that full day increments are available.
- 2443.3 An employee shall not be furloughed on any date or at any time other than those specified in the notice to the employee.
- 2443.4 An employee shall be furloughed on each of his or her scheduled furlough dates regardless of any leave request or other reason for absence on the furlough date.
- 2443.5 An employee shall not be required to work on his or her scheduled furlough date and time.

2444 NOTICE TO EMPLOYEES OF A FURLOUGH

- 2444.1 Each employee to be furloughed shall be entitled to written notice at least thirty (30) full days before the employee's first furlough date.
- 2444.2 In counting the thirty-day (30-day) minimum notice period, the day the employee receives the notice shall be omitted; and a notice period that ends on a Saturday, Sunday or legal holiday shall be automatically extended to the next workday.
- 2444.3 An employee shall be entitled to a new written notice of at least thirty (30) full days if a decision is made to increase the number of scheduled furlough hours.

2445 CONTENT OF FURLOUGH NOTICE

- 2445.1 Each notice shall state the following:
 - (a) The competitive area in which the furlough is to be conducted;
 - (b) The dates and times on which the employee is to be furloughed;

- (c) The place where the employee may review the D.C. personnel regulations governing furloughs; and
- (d) The employee's rights, including, if applicable, the time limit for appeal and the location of the office to which an appeal should be sent.

2446 APPEAL OF A FURLOUGH

- 2446.1 An employee who has received a notice of furlough under § 2444 may file an appeal with the Office of Employee Appeals (OEA) under the provisions of OEA's regulations, unless otherwise provided under a collective bargaining agreement, if he or she believes that his or her agency has incorrectly applied the provisions of §§ 2438 through 2445.

2499 DEFINITIONS

- 2499.1 When used in this chapter, the following terms shall have the meaning ascribed:

Agency – the meaning set forth in § 301(1) of the CMPA (D.C. Official Code § 1-603.01(1) (2001), but including boards and commissions as described in § 301(13) of the CMPA (D.C. Official Code § 1-603.01(13) (2001), and excluding the courts.

Competing employee – an employee in tenure groups I, II, or III.

Competitive area – the organizational boundaries in which a reduction in force or a furlough is conducted.

Competitive level – the grouping of similar positions (in a competitive area) within which employees compete for retention.

Days – calendar days, unless otherwise specified.

Detail – a temporary assignment of an employee to a different position to meet a temporary need for a specified period, with the employee returning to his or her regular duties at the end of the detail. An employee may be detailed to an established or an unestablished position. A position is not filled by a detail, as the employee continues to be the incumbent of the position from which detailed.

Displaced employee – a former employee in the Career Service, a line attorney in the Legal Service, a supervisory and a non-supervisory in the Legal Service who does not occupy a Senior Executive Attorney Service position, or an Excepted Service attorney who was separated by reduction in force.

Furlough – the temporary involuntary placement of all employees within a competitive area in a non-duty, non-pay status for an equitable period of time within a leave year for the reason set forth in § 2438.1.

Job sharing – the occupancy of a continuing position, which is budgeted as a full-time position, by two (2) or more employees on a part-time basis continuously during a designated period. This option may be appropriately used when the agency determines that the position needs to be filled on a full-time basis in order to avoid disrupting its operation.

Obligated position – a position to which an employee has restoration rights under the provisions of the Vietnam Veterans Readjustment Assistance Act of 1974 (38 U.S.C. § 2021 *et seq.*).

One round of competition – a round of lateral competition for job retention in the employee's competitive level.

Personnel authority – an individual or entity with the authority to administer all or part of a personnel management program as provided in § 401 of the CMPA (D.C. Official Code § 1-604.01 *et seq.*) (2001).

Preference eligible – a veteran preference eligible as defined in 5 U.S.C. § 2108 and § 2417 of this chapter.

Realignment – an action which affects the internal structure or functions of an agency, but which does not constitute a reorganization.

Reduced working hours – the occupancy of a position by one (1) individual on less than a full-time basis and the employee is placed in a non-duty, non-pay status either continuously or discontinuously during a designated period. This option may be appropriately used when the agency determines that the position may be filled on a part-time basis temporarily, without undue interruption of the work program.

Released employee – an employee who has been reached for release from his or her competitive level.

Reorganization – an action which results in the transfer, consolidation, abolition, or authorization with respect to functions and hierarchy, between or among agencies, and which affects the structure or structures thereof; which reorganization is subject to adoption by legislative action, including consideration by the Council of the District of Columbia in accordance with the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Official Code §§ 1-315.01 through 1-315.07) (2001).

Retention register – the listing of employees occupying positions in a competitive level by tenure group and reduction-in-force service computation date.

Retention standing – the employee's standing on the retention register in relation to other competing employees within his or her competitive level.

TAPER appointment – a temporary appointment pending establishment of a register when there are insufficient candidates on a register appropriate for filling a position that will last for more than one (1) year and the public interest requires that the vacancy be filled before eligibles can be certified.

Temporary appointment – an appointment with a specific time limitation of one (1) year or less.

Tenure group – the retention group in which competing employees shall be categorized according to their current type of appointment.

Term appointment – an appointment with a specific time limitation in excess of one (1) year, but not exceeding four (4) years, unless extended by the personnel authority as provided in Chapter 8 of these regulations, or as otherwise provided by statute.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Acting Director of Personnel, 441 4th Street, N.W., Suite 310S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the D.C. Register. Additional copies of these proposed rules are available from the above address.

D.C. OFFICE OF PERSONNEL**NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Subtitle B of Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139), as added by § 2 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002, effective July 24, 2002 (D.C. Law 14-182; 49 DCR 8276, August 30, 2002) (the "Act"), and PR 15-262 (deemed approved on October 4, 2003), hereby gives notice of the intent to adopt, in no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, the following rules. The Act provides that each attorney employed at the level of DS-13 or above who is required to be a member of the D.C. Bar as a prerequisite of employment and who is employed by the Mayor, the Office of the Corporation Counsel, the Office of the Chief Financial Officer, the Board of Education, and by any independent agency, shall obtain, on an annual basis, a certificate of good standing and file the certificate with the D.C. Office of Personnel. The Act also requires that the Director of Personnel promulgate rules and that the rules be submitted to the Council for a 45-day period of review. These rules will amend Chapter 36 of the *D.C. Personnel Regulations*, Legal Service, by adding a new § 3617 establishing the provisions for the filing of the certificate and related procedures, including the standards for the granting of temporary waivers of the filing requirement and attorney notification procedures. While PR 15-15 was deemed approved by the Council on January 25, 2003 and a Notice of Proposed Rulemaking published at 50 DCR 1577 (February 14, 2003), comments were received and substantive changes incorporating some of the comments are being made by these new proposed rules. Specifically, § 3617.6 now provides that any consolidated listing requesting certificates of good standing for attorneys shall include each attorney's bar number, and a new § 3617.7 has been added to provide that any consolidated listing prepared shall be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year. Upon adoption, these rules will amend Chapter 36, *D.C. Personnel Regulations*, Legal Service, published at 47 DCR 7371 (September 8, 2000).

CHAPTER 36**LEGAL SERVICE**

A new § 3617 is being added to read as follows:

3617 CERTIFICATE OF GOOD STANDING FILING REQUIREMENT

- 3617.1 The provisions of this section shall be applicable to each attorney appointed to the Legal Service who is employed by the Office of the Corporation Counsel, another subordinate agency or any executive independent agency (other than the Housing Finance Agency, Pretrial Services Agency, Public Defender

Services, Water and Sewer Authority, Washington Convention Center Authority, or Housing Authority), at the level of DS-13 or above who is required to be a member of the D.C. Bar as a prerequisite of employment.

- 3617.2 Not later than December 15 of each year and as specified in this section, each attorney as described in § 3617.1 shall file with the D.C. Office of Personnel a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.
- 3617.3 The certificate of good standing submitted every year pursuant to § 3617.2 shall be dated not earlier than October 1 and not later than December 15 of the year of submission.
- 3617.4 The Corporation Counsel (or his or her designee), another subordinate agency head (in the case of an attorney not under the Corporation Counsel's direction and control), and any independent personnel authority shall be responsible for:
- (a) Notifying each attorney as described in § 3617.1 of the filing requirement every year; and
 - (b) Submitting a list of attorneys in the Office of the Corporation Counsel, other subordinate agencies, and independent agencies who are subject to the filing requirement to the Director of Personnel every year, not later than the December 15 deadline.
- 3617.5 Notwithstanding the procedures in § 3617.2, the Corporation Counsel (or his or her designee), another subordinate agency head (in the case of an attorney not under the Corporation Counsel's direction and control), and any independent personnel authority, may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing for each attorney subject to the filing requirement who is employed in the Office of the Corporation Counsel, another subordinate agency, or an independent agency, and file the original individual certificates with the D.C. Office of Personnel on behalf of each attorney.
- 3617.6 The Corporation Counsel (or his or her designee), another subordinate agency head (in the case of an attorney not under the Corporation Counsel's direction and control), and any independent personnel authority, shall establish internal procedures for the compilation of the consolidated listing pursuant to § 3617.5, and every year inform each attorney subject to the filing requirement of the internal procedures. Any consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals shall include, at a minimum, the following:
- (a) The attorney's name and bar number and, if necessary, some other identifier such as the attorney's date of admission to the D.C. Bar;

- (b) A request that an individual certificate be prepared for each attorney in good standing from the names submitted in the consolidated listing; and
 - (c) A request that the Committee on Admissions, D.C. Court of Appeals, specify which attorneys, from the names submitted in the consolidated listing, are not in good standing.
- 3617.7 Any consolidated listing prepared pursuant to § 3617.5 shall be submitted to the Committee on Admissions as soon after October 1 of each year as practicable, but not later than November 15 of each year.
- 3617.8 Nothing in this section shall prevent an attorney subject to the certificate of good standing filing requirement from individually applying for the certificate from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the D.C. Office of Personnel by December 15 of each year.
- 3617.9 If the Corporation Counsel (or his or her designee), another subordinate agency head (in the case of an attorney not under the Corporation Counsel's direction and control), and any independent personnel authority, elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals pursuant to § 3617.5, the Corporation Counsel (or his or her designee), other subordinate agency head, and independent personnel authority, shall provide every year to the Director of Personnel:
- (a) Each original individual certificate of good standing received;
 - (b) The name of each attorney who is not in good standing; and
 - (c) A copy of the consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals.
- 3617.10 Upon receipt of the original individual certificate of good standing from each attorney or the Corporation Counsel, other subordinate agency head, or independent personnel authority on his or her behalf, the Director of Personnel or his or her designee shall:
- (a) File the original individual certificates of good standing in a place designated for that purpose; and
 - (b) In the case of attorneys employed by other subordinate agencies under the Corporation Counsel's direction and control, forward the name of any attorney who is not in compliance with the filing requirement to the appropriate subordinate agency head.
- 3617.11 Notwithstanding any other provision in this section, the Director of Personnel may establish internal procedures to identify every year each attorney as described in § 3617.1 who is subject to the filing requirement and

subsequently identify any attorney who did not comply with the filing requirement.

- 3617.12 Failure of any attorney as described in § 3617.1, either individually or through the Office of the Corporation Counsel, other subordinate agency head, or independent personnel authority to file the certificate of good standing with the D.C. Office of Personnel by December 15 of each year, or to request and receive a temporary waiver of the filing requirement as specified in this section, shall result in forfeiture of employment.
- 3617.13 Upon written request, the Director of Personnel or his or her designee may grant a temporary waiver of the filing requirement to an attorney for whom compliance with the filing requirement by December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause.
- 3617.14 Any request for a temporary waiver of the filing requirement shall be submitted by the attorney to the Director of Personnel not later than December 1. The request shall include:
- (a) The approximate date by which the attorney believes he or she may be able to obtain the certificate of good standing; and
 - (b) Any appropriate or required supporting material or documentation to substantiate the request.
- 3617.15 The Director of Personnel or his or her designee shall promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A written notification granting a temporary waiver of the filing requirement shall include the extended date by which the attorney shall file the certificate of good standing with the D.C. Office of Personnel.
- 3617.16 The Corporation Counsel, every other subordinate agency head, and every independent personnel authority shall provide a written notice of the intent to terminate employment to any agency attorney who is not in compliance with the filing requirement. The notice shall inform the attorney:
- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing with the D.C. Office of Personnel;
 - (b) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate of good standing with the D.C. Office of Personnel within the prescribed period; and
 - (c) The effective date of termination in the event that he or she is unable to file the certificate of good standing with the D.C. Office of Personnel within the prescribed period.

- 3617.17 Each attorney shall be notified by the personnel authority at the time of hire, in writing, of the certificate of good standing filing requirement and that failure to comply with the requirement by December 15 of each year following the year of employment with the District government shall result in forfeiture of employment.
- 3617.18 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of Personnel shall publish in the *D.C. Register* the list of attorneys who have not met the filing requirement.

Comments on these proposed regulations should be submitted, in writing, to Ms. Judy D. Banks, Acting Director of Personnel, 441 4th Street, NW, Suite 310S, Washington, D.C. 20001, within thirty (30) days of the publication of this notice in the *D.C. Register*. Additional copies of these proposed rules are available from the above address.